

No. 23-15285

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

IN RE GOOGLE PLAY STORE ANTITRUST LITIGATION

MARY CARR, ET AL.
V.
GOOGLE LLC, ET AL.

Interlocutory Appeal from the
U.S. District Court for the Northern District of California
No. 21-md-2981; No. 20-cv-5761
Hon. District Judge James Donato

**APPELLEES' RESPONSE TO APPELLANTS' MOTION
FOR LIMITED REMAND UNDER FEDERAL RULE OF
APPELLATE PROCEDURE 12.1(b) AND TO REMOVE
THIS CASE FROM THE ORAL ARGUMENT
CALENDAR FOR SEPTEMBER 11, 2023**

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August 29, 2023

Google has moved this Court to remove this matter from the September 11, 2023 oral argument calendar and to issue a limited remand under Federal Rule of Appellate Procedure 12.1(b). Plaintiffs-Appellees join Google's requests that the Court remove this case from the oral argument calendar and that the Court act on the motion on an expedited basis because of the proximity of oral argument. Plaintiffs also agree that a "remand for further proceedings" in the District Court pursuant to Federal Rule of Appellate Procedure 12.1(b) is appropriate in light of the District Court's recent *Daubert* ruling and order. *See* 3:21-md-02981-JD (N.D. Cal.), ECF Nos. 588, 589.

However, while Google seemingly would like this Court to order the District Court to confine its actions to vacating class certification, what precise ruling or rulings the District Court makes should be decided by the District Court in its discretion after hearing from the parties, which the District Court indicated it wanted to do. ECF No. 589 at 2 ("The parties are directed to meet and confer, and be prepared to discuss proposed next steps with the Court at the September 7, 2023 status conference."); *see Mendia v. Garcia*, 874 F.3d 1118, 1122 (9th Cir. 2017) (ordering remand "for the limited purpose of permitting the government

to move, and the district court to rule, on the application of its earlier order”). Once the District Court takes further steps in accordance with its orders, this Court should dismiss this appeal.

For the foregoing reasons, Plaintiffs agree that this Court should vacate the oral argument that is currently set for September 11, 2023, but ask that this Court order a limited remand that allows the District Court to take such further steps as appropriate after hearing from the parties.

August 29, 2023

By: /s/ Adam L. Hoeflich

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CERTIFICATE OF COMPLIANCE

I certify that:

1. This motion response complies with the page limitations of Ninth Circuit Rule 27-1 and the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 2 pages and 293 words, excluding the parts of the motion exempted by Federal Rules of Appellate Procedure 27(a)(2)(B) and 32(f).

2. This motion response complies with the typeface and typestyle requirements of Federal Rule of Appellate Procedure 32(a)(5) and (a)(6) because it was prepared in Microsoft Office Word 2010 in 14-point Century Schoolbook, a proportionally spaced typeface.

August 29, 2023

/s/ Adam L. Hoeflich
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Counsel for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that, on August 29, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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